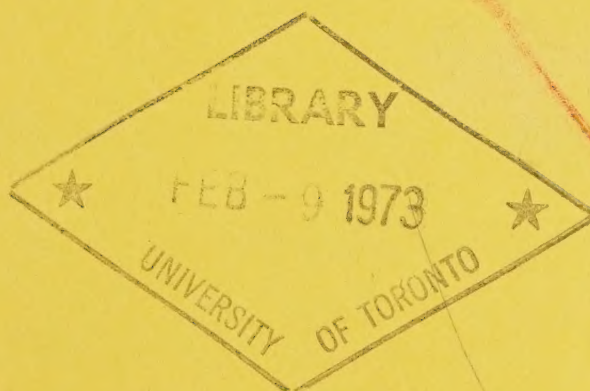


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FINAL REPORT ON THE
DISTRIBUTION OF PAPERBACKS AND PERIODICALS
IN ONTARIO



Ontario

ROYAL COMMISSION ON BOOK PUBLISHING
MARCH 27, 1972

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ONTARIO

ROYAL COMMISSION ON BOOK PUBLISHING

Commissioners

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To His Honour,
The Lieutenant Governor of Ontario.

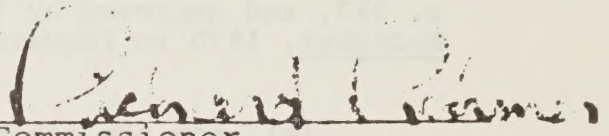
May It Please Your Honour,

We, the undersigned, Richard Heath Rohmer, Q.C., Dalton Kingsley Camp, and Marsh Jeanneret appointed Commissioners by Order-in-Council OC-3991/70 pursuant to the provisions of The Public Inquiries Act, R.S.O. 1960, c. 323, and approved by Your Honour on the 23rd day of December, 1970 to inquire into and report upon:

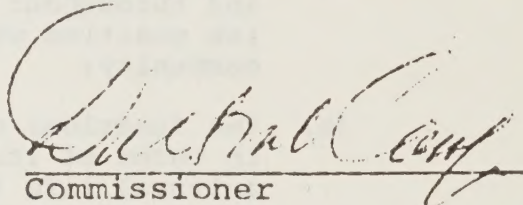
- (a) the publishing industry in Ontario and throughout Canada with respect to its position within the business community;
- (b) the functions of the publishing industry in terms of its contributions to the cultural life and education of the people of the Province of Ontario and Canada;
- (c) the economic, cultural, social or other consequences for the people of Ontario and of Canada of the substantial ownership or control of publishing firms by foreign or foreign-owned or foreign-controlled corporations or by non-Canadians;

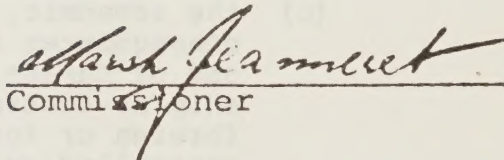
- (d) the contracts or proposed contracts between any geographical wholesaler of mass market paperback books and periodicals and any retailer of such goods that creates or tends to create an obligation on the retailer to purchase all merchandise supplied by the wholesaler from that wholesaler to the exclusion of other sources of supply and, without limiting the generality of the foregoing, to inquire into the merchandising of paperback books, periodicals, and other merchandise normally carried by geographical wholesalers and sold by their retailers

beg to submit to Your Honour our Final Report on the Distribution of Paperbacks and Periodicals in Ontario.


Commissioner

27th March, 1972


Commissioner


Commissioner

The Second Interim Report of this Commission, submitted on June 8, 1971, questioned whether the system whereby paperbacks and periodicals were being distributed in Ontario served the public interest, and made certain recommendations regarding legislation it considered desirable in order to prevent "further reduction in Canadian ownership and control of Ontario wholesalers and distributors of periodical literature (with which distribution mass-market paperbacks may be associated)." The Government introduced Bill 64 almost immediately thereafter, which was later enacted as The Paperback and Periodical Distributors Act, 1971. The provisions contained in this legislation became effective on the 14th day of June of the same year. The complete text of the Commission's Second Interim Report is included herewith as Appendix A.

The Act introduced a system for registration of businesses engaged in the distribution of paperback and periodical publications, with some important exceptions, and made Canadian ownership a condition both for the registration of any new enterprises of this kind and for the

geographical expansion of existing businesses.

During the month of July, 1971, the Commission held a series of public hearings in relation to its Second Interim Report, in the course of which a wide range of evidence was heard regarding the system whereby periodicals and so-called mass-market paperbacks are distributed in Ontario. The testimony also dealt with the method whereby exclusive rights to market in specific territories are exchanged from time to time under agreements for sale, and sometimes acquired and lost where no such agreements have been entered into at all.

A principal concern of the Commission in its Second Interim Report had to do with evidence accumulated in the course of its research which indicated that ownership of the channels of distribution for periodicals and mass-market paperbacks was rapidly passing from Canadian to foreign control. The Commission stated that it had reason to believe that a threat of monopoly was developing which had as its objective unified ownership or control of most, if not all, regional news companies in Ontario, otherwise referred to as geographical wholesalers. That a major foreign

takeover in this field had been imminent was amply supported by the evidence received at the July hearings, as will be pointed out shortly. However, because The Paperback and Periodical Distributors Act, 1971 effectively prevented the further erosion of Canadian ownership in this area of publishing, it seemed at the time that any long-term recommendations regarding organization, control, or ownership of periodical and paperback wholesaling in Ontario could be dealt with by the Commission in its final report. Consequently, no further recommendations for withdrawal or modification of the legislation already passed have yet been made, although the Commission has always envisaged the possibility that amendments in the Act may be called for in the light of experience.

The situation, however, has undergone some change. Certain new developments in periodical wholesaling practices have been reported. There has been a further evolution of public policy regarding the cultural consequences of foreign ownership in certain areas, and this is summarized in the Preliminary Report of the Select Committee of the Legislature on Economic and

Cultural Nationalism (March 1, 1972). Finally, the Commission itself has now had an opportunity to consider fully, in the light of hearings that have been held, the implications of the present situation to the people of Ontario and Canada. The Commission has decided therefore that additional recommendations ought to be made concerning the distribution of paperbacks and periodicals at this time, including suggestions for certain amendments to The Paperback and Periodical Distributors Act, 1971.

These recommendations, and the reasons for them, are dealt with in this report. By presenting its conclusions on this rather special phase of its work now, the Commission in its final report on book publishing, which is being written, will be free to concern itself more exclusively with the problems of Canadian book publishing as such, and the ways in which they relate to the public interest. The latter problems differ from those discussed in this report, and so must their solutions.

An additional reason why the Commission is submitting its report on the distribution of paperbacks and periodicals in Ontario at this time

is the extension of its terms of reference under an Order-in-Council dated the 18th of November, 1971. The Order-in-Council directed the Commission to examine any contract or proposed contract between any geographical wholesaler and retailer in the mass-market and paperback field "that creates or tends to create an obligation on the retailer to purchase all merchandise supplied by the wholesaler from that wholesaler to the exclusion of other sources of supply..." A special hearing was held on 10th December, 1971 following a subpoena issued by the Commission under these added terms of reference to Mr. John Romanez, a representative of Metro Toronto News Company, asking for the production of certain information. Mr. Romanez, accompanied by counsel, attended this hearing and gave evidence. The Commission feels that its findings pursuant to these added terms of reference should also be reported at this time.

MASS-MARKET PAPERBACKS

The July (1971) hearings following the Commission's Second Interim Report were held on six days between July 13 and July 23, during which time a considerable number of witnesses were heard and a great deal of evidence was taken concerning the channels through which mass-market paperbacks and periodicals normally move from their publishers, wherever these may be located, to their readers in Ontario.

The phrase "mass-market paperbacks" normally refers to special paperback editions issued by specialist mass-market paperback houses. As a general rule, these comprise only reprints of fast selling, if not best selling, books originally issued by other publishers in traditional formats. The rights to republish mass-market editions in this way are ordinarily leased from the original publishers, even when those publishers may have issued the same works in paperback editions of their own - often known as "quality paperbacks." However, mass-market paperback editions are produced in much larger printings, frequently of

several hundred thousand copies at a time, and are consequently capable of being published at much lower and somewhat standardized list prices.

The marketing of mass-market paperbacks in large quantities requires a specialized system of distribution leading to as many points of retail display and sale as possible. Access to these must be had even if the exhibit of individual titles can continue only so long as sales turnover remains rapid, competition for the display space being great. It is not surprising therefore that the marketing system best suited to the needs of mass-market paperback publishers in North America is the one which has developed for the marketing of most periodicals (apart from newspapers and apart from magazines that are distributed by mail directly to subscribers).

To the extent that they can do so efficiently, mass-market paperback publishers do distribute their products through bookstores as well. Many American publishers of mass-market paperbacks appoint publishers or establish distribution centres in Canada in order to warehouse their publications in this country. These mass-

market paperback agencies supply both bookstores and news wholesaling companies; the latter were defined in the hearings as geographical wholesalers, and are so referred to in this report. Unfortunately, some of the Canadian agencies established by American mass-market paperback publishers are unwilling to supply all booksellers in Canada. The exclusive right to do this is sometimes claimed by an intervening geographical wholesaler, who relays paperbacks from the agency to such booksellers at a reduced wholesale discount. In such cases, the mass-market paperbacks move from American publisher to Canadian agent to Ontario geographical wholesaler to Ontario bookstore to Ontario reader - a circuitous route which involves the stacking of many separate overheads and limits the service possible to a reader wishing to procure a particular title.

Mass-market paperback publishers selling their products through the periodical marketing system have to accept some disadvantages along with the undoubted advantages of increased turnover. For example, the geographical wholesalers who distribute magazines are accustomed to dealing

with merchandise which carries a built-in expiry date. Unsold copies of periodicals are therefore not normally returned to their suppliers except as torn covers (which may be returned for accounting purposes). Similarly, mass-market paperback books are not normally returned to their publishers for resale, even though books are not dated as are periodicals. We have been told of exceptions to this practice, but geographical wholesalers, or the news dealers whom they service, ordinarily do destroy unsold paperbacks and claim credit for them from their suppliers. The reason why they prefer to handle them in the same way that they handle ephemeral magazines is clear.

What determines the time that a mass-market paperback title stays on a display rack is its rate of turnover, just as the quantities and points of distribution for periodicals will be determined exclusively by their profitability. The whole system of distribution is geared to monitor profitability of turnover through many different outlets with maximum speed and minimum expense, and it is not surprising that we were told that computerized procedures are being substituted for

human decision-making wherever possible.

It will be seen from the preceding brief description of how mass paperbacks are distributed that the Canadian segment of the market tends to be too small to support separate Canadian publication of mass-market paperback editions, especially of original Canadian books. Publishing experience to date has confirmed this, although a few exceptions could be given. Nor does it follow that mass-market paperback editions of best-selling Canadian books (best-selling internationally, that is) are never published. A number of Canadian authors appear regularly in series issued by American mass-market publishing houses, often, it must be admitted, without having been published by a Canadian publisher in the first place. There are a number of quality paperback series of Canadian books, however. What is difficult, if not almost impossible, is to secure display space for these Canadian quality paperbacks at the news dealers, whose stands are serviced by geographical wholesalers or, in the case of small accounts, by "rack jobbers" who buy from the geographical wholesalers. Because the competition for space is too keen, and

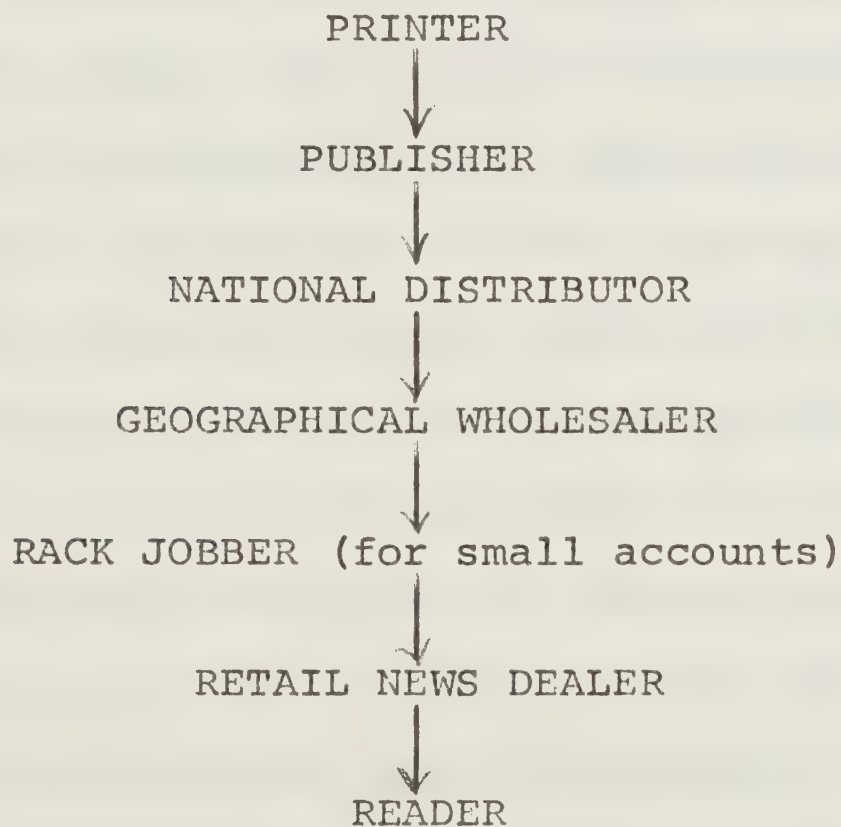
the turnover and profitability of original Canadian publications generally too low, the latter rarely appeal as merchandise to the geographical wholesaler. It is only fair to add that the retail news dealer as well is inclined to be indifferent to such publications, although under present circumstances he finds it difficult to procure Canadian items for sale even when he wishes to. Certainly no geographical wholesaler endeavours to carry a really wide range of Canadian quality paperbacks as such. Although the Commission recognizes that to enforce any system of quotas, for example, respecting Canadian content in paperback displays, would be counter-productive (it would put marginal retail outlets out of business, if nothing else) we believe that geographical wholesalers have a responsibility to supply Canadian publications to those of their accounts willing to display them. This conclusion is reflected in a proposed amendment to the Act which appears as Recommendation 1 at the end of this report.

DISTRIBUTION OF PERIODICALS

Mass-market paperbacks, then, ride on the backs of periodicals in the distribution system. It is a system to which original Canadian books normally have poor access, when they have any at all. But what should be even more discomfoting to Canadians, in the opinion of the Commission, is that geographical wholesalers of periodicals in Ontario are completely dominated by the national distributors who supply them, and that with few exceptions these national distributors are located outside Canada.

It is necessary to trace briefly the channels through which periodicals move from publisher to reader in order to explain the degree to which our domestic distribution of magazines is thus controlled from beyond our borders. It is also important to understand how this fact militates against the operation of any kind of free market economy in the buying and selling of those Ontario businesses concerned with geographical wholesaling of periodicals, whether such businesses are owned in Canada or not.

It should be noted that we are not concerned here with the distribution of magazines by mail to subscribers. But for the vast quantities of magazines which reach readers via newsstands, a rather remarkable chain of successive custodians is involved. It is true that many of these stages in distribution never see the periodicals themselves; obviously there would be no time for them to do so; accordingly, magazines are frequently shipped from printers abroad directly to geographical wholesalers in this country. Nevertheless, the complete list of stages of control in the distribution system is as follows:



For foreign magazines - and most magazines sold in Canada are foreign - the national distributor in the above chain is located abroad, normally in the United States. The geographical wholesalers whom he supplies, however, and whose exclusive rights to distribute his periodicals he claims can be determined by him alone are located in Ontario, at least in so far as they concern us. Substantial sums have been paid in the past to purchase such geographical wholesalerships, and although these sales have ordinarily resulted in the purchaser acquiring the exclusive right to sell the periodicals controlled by the national distributors concerned, we were told during the course of the July hearings that there is no guarantee that these vitally important rights are included automatically in such sales. Certainly this was the position taken by the representatives of two national distributors whom we heard from, namely Triangle Publications Inc. and MacFadden-Bartell Corporation. In this position they had the support, and in the opinion of the Commission, the active co-operation as well, of Metro Toronto News Company.

Metro Toronto News Company is a limited partnership, representing the interests of the Molasky family of St. Louis, Missouri, and the Rottman family of Bridgeport, Connecticut. The Molasky family owns Pierce News Company of St. Louis, Missouri, which carries on business as a geographical wholesaler in several important regions in the United States. Metro Toronto News Company Limited is owned by Pierce News Company of St. Louis. Metro Toronto News Company Limited owns 50% of the limited partnership known as Metro Toronto News Company. The other 50% of Metro Toronto News Company is owned by the Rottman family. Management of Metro Toronto News Company is by Pierce News Company of St. Louis through its wholly owned Canadian subsidiary Metro Toronto News Company Limited. Mr. Mark Molasky is the President of Metro Toronto News Company Limited and President of Pierce News Company of St. Louis. The senior officer of Metro Toronto News Company on the other hand is Mr. John Romanez, who holds the title of General Manager.

If the rights of a particular geographical wholesaler in Ontario to distribute the publications

of a given national distributor are subject at all times to the latter's approval, it is a little difficult to understand exactly what the vendor contracts to deliver when such businesses in Ontario are sold, even though such sales have in the past involved very substantial sums, as the evidence in the hearings indicated. While physical assets have normally been included, we noted that the value of these is usually only a minuscule part of the prices that have been asked and offered. One national distributor protested the use of the word "franchise" to describe the exclusive territorial rights he gives a geographical wholesaler. Yet by whatever name one describes such rights one thing became completely clear to the Commission in the course of the hearings. This was that geographical wholesalers of periodicals in Ontario do indeed exercise substantial monopolies in the areas in which they operate, and that these monopolies can be made and broken at will by the national distributors who grant them.

Because almost all the national distributors are located outside Canada, and regulation of neither their terms of sale nor whom they supply is

therefore possible under The Paperback and Periodical Distributors Act, 1971 in its present form, the interests of the public cannot be guaranteed under the existing system. In order to remedy this situation the Commission is recommending a further amendment to the Act at this time. The purpose of this amendment is to transfer monopoly control of geographical wholesalers of periodical literature in Ontario from the national distributors located abroad to the province itself. The proposed amendment is set forth as Recommendation 2 at the end of this report.

Some national distributors may claim that without the right to transfer and cancel franchises among geographical wholesalers their ability to ensure good service and to achieve maximum profitability will be impaired. The Commission believes that the public interest would be less well served, however, if national distributors retained the right to manipulate the ownership of geographical wholesalerships as they can do now. The business interests of national distributors can be given full consideration by the Registrar in the public hearings at which applications for changes of

registration among geographical wholesalers should be reviewed in the future.

EXTENSION OF TERMS OF REFERENCE

The extension of the terms of reference of this Commission under an Order-in-Council dated the 18th of November, 1971, was referred to early in this report. Because this extension directed the Commission to examine possible contracts between geographical wholesalers and retailers which might restrict the rights of the latter to purchase from other suppliers, affidavits were requested by the Commission from all geographical wholesalers in Ontario describing the details of any such possible contracts to which they might be party. All such requests were complied with, the affidavits indicating that with one exception no contracts of this kind had been either entered into or proposed. A review of the exceptional case follows.

A contract reportedly circulated earlier by Metro Toronto News Company, which had been the subject of complaints received by the Commission, led to a subpoena dated the 29th day of November, 1971, being served upon Mr. John Romanetz, General

Manager of Metro Toronto News Company, requiring him to appear at a special hearing. This hearing was convened on the 10th day of December following. The proceedings were recorded as part of the regular transcript of the Commission's hearings, the testimony given appearing on pages 4346 through 4408. (The previous hearings on the subject of geographical wholesaling, referred to elsewhere in this report as the "July hearings," are recorded on pages 2791 through 3676.)

It appears that during the autumn of 1970 someone in the Metro Toronto News Company organization decided to have a contract dealing with credit terms and terms of return of merchandise drawn up for submission to its retail accounts. To this end, Metro Toronto News Company apparently consulted informally the firm then known as Enfield, Kimberley & Hemmerick, who drafted a "proposed consignment contract" which they forwarded to Metro Toronto News Company with a letter dated the 8th' day of September, 1970. That letter, together with the draft referred to, is Appendix B to this report. It is to be noted that this draft made no reference to any exclusivity with regard to the purchase of

books, periodicals or merchandise from Metro Toronto News Company.

A second draft "dealer agreement" was prepared by the same legal firm and submitted to Metro Toronto News Company on 21st April, 1971. This draft contained substantial alterations from the text of the previous draft, in that it made provision for an exclusivity which is of concern to this Commission. Correspondence has been received by the Commission from Mr. Frank A. Enfield of the above firm since the December hearing in which he submits that this dealer agreement was intended only as a draft for discussion and analysis. At all events, the draft dealer agreement in question read as follows:

METRO TORONTO NEWS COMPANY

DEALER AGREEMENT

The undersigned dealer hereby agrees to and with Metro Toronto News Company to purchase merchandise and publications under the following terms:

1. The dealer agrees that he will deal exclusively with Metro Toronto News Company in regard to any merchandise or publications supplied by Metro Toronto News Company, and that he will not purchase the same publications or merchandise from any other supplier or source. Metro Toronto News Company agrees to make available to the dealer on

request details of all of the publications or merchandise that are available from time to time.

2. The dealer and Metro Toronto News Company agree that any merchandise and publications supplied by Metro Toronto News Company remain the property of the dealer until sold or returned for credit, with the proviso that Metro Toronto News Company shall have the right to take possession of and remove merchandise or publications from the dealer's possession at any time or times and credit the dealer's account for the value of the merchandise or publications repossessed.

3. Procedure for shipments to dealer and payments for merchandise by dealer:

(i) Merchandise and publications will be delivered by Metro Toronto News Company at regular intervals to dealer's place of business;

(ii) The invoices will be delivered with the merchandise and publications;

(iii) All returns of merchandise and publications are to be made up by the dealer and picked up at regular intervals by Metro Toronto News Company;

(iv) Payment for merchandise and publications sold by the dealer, being the invoice price less credit for returns, shall be paid for weekly/monthly by the dealer. There will be a service charge of \$1.00 payable by the dealer to Metro Toronto News Company for each week that any payment remains overdue and unpaid.

4. Either party may terminate this dealer agreement at any time, either by oral notice or otherwise. On such termination, dealer is liable for immediate payment of all outstanding accounts less credit for returns.

5. In the event of the sale or transfer by the dealer of the assets or shares of his business, Metro Toronto News Company to be informed prior to the effective date of sale so that proper arrangements can be made regarding the rendering of a final account to the dealer and payment by the

dealer of any accounts outstanding subject to credit for returns. In the event the dealer does not inform Metro Toronto News Company of the change in ownership, the dealer herein will be liable for all accounts incurred by the new dealer. The dealer agrees to pay Metro Toronto News Company in full on or before the effective date of transfer of ownership of the business. The dealer acknowledges and agrees that any equipment supplied by Metro Toronto News Company to the dealer for display purposes or otherwise is on loan to the dealer and is the property at all times of Metro Toronto News Company and that it will not be removed from the dealer's premises unless with the consent of Metro Toronto News Company.

DATED this day of , 19 .

METRO TORONTO NEWS COMPANY

by:.....

.....
Dealer's signature

(DEALER PLEASE NOTE: When signing please designate whether you are a sole owner or a limited company and show the official position of the person signing, for example, "owner", "partner", "president", or "secretary" or other officer of a limited company.)

Mr. Romanez testified that it was he who instructed Enfield, Kimberley & Hemmerick to insert paragraphs 1 and 2 of the above "dealer agreement", which dealt specifically with exclusivity.

On or about the 29th day of September, 1971, this agreement in substantially the form quoted, but omitting the sentence referring to a service

charge on overdue accounts, was sent by Metro Toronto News Company to 787 of its retail accounts for signature. A copy of the letter of transmittal is Appendix C to this report. Mr. Romanez further testified that Mr. Mark Molasky, president of his parent company (Metro Toronto News Company Limited), knew nothing about this agreement, but that although he himself had approved it in principle it was actually sent out by his Credit Manager on 29th September, the same day that he (Romanez) departed to attend a convention in California. Although Mr. Romanez testified that he was not aware until later that the agreement in question had been despatched, it is the opinion of the Commission that he ought to have been told about the mailing of a document embodying so important a policy departure. Moreover, the Commission considers that only one interpretation would have been placed upon it by the average recipient, and this was that by signing it a retailer would obligate himself to deal exclusively with Metro Toronto News Company "in regard to any merchandise or publications supplied by Metro Toronto News Company, and that he will not

purchase the same publications or merchandise from any other supplier or source." A different interpretation of the agreement was offered at the hearing by Metro Toronto News Company and is reviewed later below.

Evidence was received that 143 of the above dealer agreements were actually returned. There was further testimony to the effect that some dealers requested rewording of the agreement and that in such cases it was amended. These amendments, we were told, were intended to "make it clear that [what was referred to by the agreement was] returnable publications and merchandise." Mr. Romanez also testified that there was no intention on the part of his company to discriminate in any way against dealers who failed or refused to sign the agreement. When asked whether or not this meant that the agreement was meaningless, he replied that it was "psychological." Later in the testimony it was submitted that the original purpose of the agreement was to make it possible for the company to seize and recover in the event of bankruptcy of an account. Still later, Mr. Romanez interpreted the agreement to mean that if a dealer

bought paperbacks from his firm, then he would expect them under the agreement to buy them exclusively from his firm. In the course of the hearing, the counsel for Metro Toronto News Company, Mr. Sedgwick, Q.C., was asked if he would provide the Commission in writing with his argument concerning the meaning of the dealer agreement set forth above, and particularly with regard to paragraphs 1 and 2 of that document. Mr. Sedgwick responded with a letter dated December 14, 1971, which reads in part as follows:

During the proceedings before your Commission on Friday last, you asked that I make a submission as to my interpretation of the Metro Toronto News Company "Dealer Agreement". I have read and re-read the document, and have done so in the light of Mr. Romanez' evidence as to what the Company intended.

I take the words in paragraph 1 "he will deal exclusively with Metro Toronto News Company in regard to any merchandise or publications supplied by Metro Toronto News Company, and that he will not purchase the same publications or merchandise from any other supplier or source" to be referable only to such precise merchandise or publications as the dealer chooses to purchase from Metro on a returnable basis, and this I think is supported both by the evidence and by paragraph 3(iii) and (iv) of the agreement. This interpretation is further inferentially supported by paragraph 2, which speaks of merchandise and publications remaining the property of the dealer "until sold or returned for credit", it

being clear as I see it that all purchases by the dealer are returnable for credit. The contract does not say that the dealer may not purchase similar publications or merchandise from any other supplier, but only "the same" publications, etc.

Thus, if a dealer has purchased from Metro (and of course, on a returnable basis) a quantity of, for example, "Logix Enterprises, 'Decals'" (Item 1 on the list supplied, Exhibit 5), he is at liberty to purchase from any other supplier any other "Decals". Metro merely wants to be able to identify the returns made to it as being returns of articles purchased from it.

The concluding words of paragraph 1 "Metro Toronto News Company agrees to make available to the dealer on request, details of all the publications or merchandise that are available, from time to time", have in my opinion, no reference to the earlier language, but are merely a statement that Metro will, at the dealers request, supply him with a list of the publications and merchandise which they handle, and from which list he may choose, or not choose, as he sees fit.

For myself, I do not consider the language of the agreement ambiguous, but if it is thought to be so one may properly refer to the evidence of Mr. Romanez as to what was intended. There was, so far as I know, no contrary evidence, and certainly no evidence of any attempt on the part of Metro News to enforce, as against their dealers, a broader exclusivity.

As Mr. Sedgwick observes, if the agreement is considered to be ambiguous one may "refer to the evidence of Mr. Romanez as to what was intended." The difficulty for retailers who received this

agreement, however, is that it would have been impossible for them to be privy to the intent of the agreement as interpreted by Mr. Romanez at the December 10th hearing.

In other words, the dealer agreement must speak for itself, and it does so eloquently. In the opinion of the Commission, it required exactly what it said it required, which was that the dealer signing it obligated himself to deal exclusively with Metro Toronto News Company in relation to any merchandise or publications supplied by that company, and not to purchase such merchandise or publications from any other supplier or source. As was made clear during the earlier July hearings, some 6,000 Ontario retailers have in the past had no choice but to buy their mass-market paperback books and periodicals from Metro Toronto News Company. In our opinion, paragraphs 1 and 2 of the dealer agreement reviewed above effectively placed the retailers who received it in a similar "no choice" position with regard to all merchandise that might be carried by Metro Toronto News Company from time to time. A dealer who declined to sign might, regardless of the testimony received as to

the real intentions of the agreement, have some reason to fear that his supply of periodicals would be cut off, there being no other source of supply for the latter available to him. This in no way implies that Metro Toronto News Company at any time threatened such action, but it would be reasonable for a dealer to infer that it might occur.

Since the conclusion of the December hearing and the exchange of subsequent correspondence with Mr. Sedgwick, Q.C. mentioned above, the Commission has been advised that the Metro Toronto News Company has in fact returned the completed copies of the dealer agreement form which it had received to those dealers who had mailed them in following its original request of last September. In view of the events summarized above, the Commission is of the opinion that no other course of action by Metro Toronto News Company would have been proper under the circumstances.

LIMITATIONS ON GEOGRAPHICAL WHOLESALING AREAS

As observed earlier it was forcefully demonstrated during the July hearings that the trading value of geographical wholesalerships in Ontario has until now been dependent on the pleasure of national distributors based outside Canada. Recommendation 2, previously referred to, will therefore do more than simply serve the public interest by transferring control of the geographical wholesalers from the national distributors to the Province of Ontario itself. It will also substantially guarantee the values of the geographical wholesalerships themselves, at least to the extent of protecting them against manipulation of their resale values by national distributors in the future. That an attempt at such manipulation did occur in the case of Kitchener News Company Limited subsequent to Mr. Molasky's unsuccessful efforts to purchase it there can be no doubt whatsoever, unless the transfer of the right to supply certain key publications by their distributors,

Triangle Publications Inc. and MacFadden-Bartell Corporation, from Kitchener News Company Limited to Metro Toronto News Company was a sheer coincidence. The Commission is unprepared to accept such an explanation. If this kind of manipulation has been possible in the past, it would again be possible in the future, except for the protection which implementation of Recommendation 2 will afford. But with that protection, the sale of geographical wholesalerships in Ontario to Canadian residents, subject only to registration of the purchaser under the Act, will be possible on a competitive basis.

With respect to interference by some national distributors in the rights exercised by geographical wholesalers as described above, the Commission has very recently received evidence of renewed activities of this kind in an area outside its jurisdiction. Specifically, we have been told that Pierce News Company of St. Louis, Missouri, sought unsuccessfully to purchase Benjamin-Montreal News Reg'd. in Montreal. Thereafter, Benjamin-Montreal News Reg'd. was informed by Triangle Publications that the latter intended to

discontinue supplying the former with copies of its magazines for resale, including TV Guide. At the same time, Benjamin-Montreal News Reg'd. was informed by Colonial Distributors of Scarborough, Ontario, that it also was appointing another geographical wholesaler in the Montreal area. The latter communication is reported to have been conveyed on behalf of Colonial Distributors by Mr. John Romanetz, an officer of that company and also General Manager of Metro Toronto News Company. Although these reported activities have not been reviewed in hearings at which all interested parties could be represented and give evidence under oath, the pattern is familiar. The present report of the Commission is not, however, based on the evidence reported here concerning Benjamin-Montreal News Reg'd.

This raises a concern which has weighed heavily with the Commission since it prepared its Second Interim Report, a concern which has been in no way allayed by the evidence taken at either the July or the December hearings. A geographical wholesaler may - in the future at least - enjoy exclusive distributing rights in the area for which

he has been registered, except when the Registrar deems it to be in the public interest to grant one or more competing registrations in the same area. The evidence taken in the hearings seems to indicate that overlapping wholesalerships would be likely to create chaotic conditions in the matter of returns of unsold copies, and possibly inefficiencies in servicing as well. Nevertheless, there may well be situations where such overlapping might be considered by the Registrar to be in the public interest, e.g. where investigations of complaints indicate that inadequate service is being provided. But apart from such special situations, it seems probable that the Registrar will be concerned with ensuring that areas are assigned to registrants in a way that ensures optimum servicing of all parts of the Province, and we anticipate that to this end exclusivity in territories assigned will be the rule rather than the exception. If, then, most such geographical wholesaling areas are to be exclusive, and if they can be bought and sold relatively freely, subject only to the approval of the Registrar, what is the largest exclusive wholesaling area that would be

consistent with the public interest?

The Commission has studied this question, which it recognizes is a critical one, at great length. Consideration has been given to establishing permanent statutory areas based on existing population quotients, but these tend to lack the flexibility which changing conditions of transportation and urban development might make desirable over the years. Having regard for the public hearings that would be available, the Commission has come to favour leaving maximum discretion with the Registrar regarding boundaries of areas accepted by him for registration from time to time, provided that a reasonable limitation on the total area assigned to any one registrant is prescribed in the Act itself. The Commission is of the opinion that the most equitable basis for determining the maximum size of any geographical wholesaler's territory will be for the Registrar to limit the area assigned to any one registrant under the Act to an approximate population ceiling. Imposing a statutory limitation in this way would recognize the fact that geographical wholesaler-ships tend by their nature to preclude competition,

practically if not absolutely. Thus it is in the public interest that they should never be acquired by too small an ownership group whether through the disproportionate expansion of one or two of their number, or through independent purchase.

It is assumed that the Registrar, in reviewing possible registrations, will give as much importance as the Commission gives to existing geographical wholesaling areas and to the firms which now serve them - both with a view to minimizing disruptions in present distribution patterns and to recognizing vested interests. However, the Commission has also concluded that the statutory population limit which should be established for all geographical wholesaling areas should be set at a sufficiently high level to accommodate and permit reasonable growth of as many existing wholesalers as possible. The one firm which cannot be accommodated by any useful population ceiling is Metro Toronto News Company itself. The following tabulation illustrates the approximate populations of geographical wholesaling areas as they existed at June 14, 1971, and as they might possibly be registered to-day subject to the discretion of the Registrar and to the limitation now being recommended:

ONTARIO PAPERBACK AND PERIODICAL WHOLESALERS

Company	Owner	Address	Estimated Annual Gross Sales	Approximate Population Served
Central News Company Limited	Can.	Thunder Bay	\$ 800,000	185,949
Churchill News Limited	Can.	Kingston	450,000	100,000
Cornwall News Distributors Limited	Can.	Cornwall	660,000	113,000
General News & Novelty Company Limited	Can.	Brantford	650,000	180,000
Kent News Service	Can.	Chatham	290,000	100,000
Kitchener News Company Limited	Can.	Kitchener	1,340,000	260,000
Lambton News Service (Somerset Specialties Limited as of June 11, 1971)	U.S.	Sarnia	430,000	80,000
Metro Toronto News Company	U.S.	Toronto	10,500,000	3,323,522
Mountain City News Co. Limited	Can.	Hamilton	1,680,000	400,000
National News Company Limited	Can.	Ottawa	2,280,000	447,000
Ottawa Valley News Company Limited	Can.	Arnprior	550,000	60,000

(continued)

ONTARIO PAPERBACK AND PERIODICAL WHOLESALERS - continued

Company	Owner	Address	Estimated Annual Gross Sales	Approximate Population Served
Sault News Service	U.S.	Sault St. Marie	\$ 290,000	74,594
Seaway News Company Limited	Can.	St. Catharines	1,210,000	337,642
Sudbury News Service Limited	U.S.	Sudbury	1,100,000	169,346
Teck News Agency Limited	Can.	Kirkland Lake	1,000,000	41,969
Timmins News Service	Can.	Timmins	170,000	78,542
Upper Canada News Limited (assets sold to Metro Toronto News Company Limited June, 1971)	U.S.	Belleville	1,410,000	280,000
Western News Distributors Limited (shares sold to Somerset Specialties Limited June, 1971)	U.S.	London	1,500,000	340,000
Windsor News Company Limited	U.S.	Windsor	1,300,000	293,000
Wentworth News Agency Limited (sold to Mountain City News Co. Limited January 3, 1972)	Can.	Hamilton	418,000	(part of Hamilton only)

The Commission considers that a population of approximately $1\frac{1}{4}$ millions is the maximum size which any geographical wholesaling area should be allowed to attain at this time if there is to be assurance that all operations of this kind in Ontario will continue to be held by a reasonable number of separate owners. Such a ceiling would leave substantial room for growth by the largest existing geographical wholesaler, with the sole exception of Metro Toronto News Company as just noted. The latter firm together with other firms having common ownership now claim exclusive wholesaling rights in areas with a total population of approximately 4 millions, including all of Metropolitan Toronto. The other firms just referred to include the geographical wholesalers based in Sarnia, London, and Belleville. Much of the territory in Ontario in which this overlapping ownership group now claim exclusive wholesaling rights was acquired quite recently, indeed during the period immediately preceding the effective date of The Paperback and Periodical Distributors Act, 1971. However the Commission considers that the date of acquisition of such

selling areas is less relevant to the public interest than the possibility that relatively large total areas should be controlled by a common interest.

Specifically, if an appropriate ceiling for geographical wholesaling areas were being established without regard for the present interests of Metro Toronto News Company, the Commission would be inclined to favour a limit that would cause the largest urban region (Metropolitan Toronto) to be shared among three or four independent enterprises. That is to say, it would favour a limit of between a half and three-quarters of a million population to be serviced by any one geographical wholesaler. Under the circumstances, it is the Commission's considered opinion that the Metropolitan Toronto area should be divided so that it may be served by a minimum of two geographical wholesalers, each presumably with an exclusive territory. One of these might well be Metro Toronto News Company. This objective would be attained if the ceiling for all areas is established at $1\frac{1}{4}$ million population as already proposed; any larger population base in the Toronto area must lead to inequitable

situations in the province at large, or else to future amalgamation of other areas into undesirably large units.

A statutory limitation of $1\frac{1}{4}$ million population in all geographical wholesaling areas would make it necessary for the owners of Metro Toronto News Company to divest themselves of a substantial part of their present Ontario interests. We think that adequate time should be permitted for this divestment, and suggest that a full year be allowed from the date of this report for it to take place. As has already been pointed out, the legislative amendments now being recommended will ensure a maximum and free market value for those areas of which Metro Toronto News Company may elect to dispose, by encouraging optimum competition - among potential Canadian purchasers - for their acquisition. The Commission also expects that the Registrar will give fair consideration to the interests of Metro Toronto News Company in establishing the boundaries of new geographical wholesaling areas to be registered under the Act as a result of the legislation being proposed, which is outlined in Recommendation 3 at the end of this report.

OWNERSHIP OF RETAIL OUTLETS

If there are cogent reasons why only Canadians should be allowed to acquire regional wholesalerships in the future, there are even stronger reasons why new ownership and control of retail outlets by non-residents should no longer be permitted. The testimony heard by the Commission has amply demonstrated the degree to which foreign control of the wholesale channels of distribution of periodicals and paperbacks invites monopolistic practices that show little regard for the private or public interests of the people of this province.

From the standpoint of Canadian cultural needs, a somewhat more serious situation would arise if retail outlets whose principal business is the display and sale of publications should also largely pass into foreign control. There would be little merit in assuring that geographical wholesalers stocked Canadian periodicals and paperbacks, for example, if the retail selecting of reading materials ceased to be done by Canadian owners. The situation could also be serious for publishers of original Canadian books in other than paperback editions. If, for example, new chains of foreign-owned bookshops

were to spring up in shopping centres and elsewhere in this province, it is possible and reasonable that their inventories might be largely selected, and largely acquired, outside this country.

The Commission believes that the retail bookseller must play a critically important role in the literary development of Canada, as its final report will make clear. If one or more foreign-owned chains of news dealers in Ontario were set up, and possibly even supplied, from abroad, the purpose of encouraging Canadian participation in the wholesaling of periodicals and paperbacks could largely be thwarted. Similarly, vertical control of retailers through ownership by geographical wholesalers, whether Canadian or not, would tend to defeat the purposes of The Paperback and Periodical Distributors Act, 1971.

For these reasons the Commission has recommended that new ownership of retail news dealers and booksellers be permitted neither to non-residents, nor to geographical wholesalers registered under the Act.

RECOMMENDATIONS

In view of the cultural importance to the public of periodicals and mass-market paperbacks distributed by geographical wholesalers in this province, as well as the importance of many publications which may not be so distributed, and with careful regard for the evidence reviewed in the preceding pages, the Commission is of the opinion that certain amendments to The Paperback and Periodical Distributors Act, 1971 should now be enacted in order to give effect to the following recommendations:

Recommendation 1. All Ontario geographical wholesalers registered under the Act should be required to carry reasonable inventories of all Canadian-edited and Canadian-published periodicals as defined in the Act, which are issued in English four or more times annually and which are for sale to the public. Geographical wholesalers registered to do business in areas which have substantial French-speaking populations should be required to carry equivalent Canadian periodicals issued in French.

All such geographical wholesalers should be required to furnish complete information at frequent intervals to all their retail accounts regarding the periodicals so carried, and should satisfy the Registrar that such information is being furnished regularly and in a useful form. However, the Registrar should be empowered to authorize any geographical wholesaler from time to time not to list and/or not to carry particular periodicals which may not be easily available, or which cannot be procured on reasonable terms with respect to discount and return privileges, or which the Registrar may concur are not intended for public distribution. Similarly all geographical wholesalers registered under the Act should be required to carry reasonable inventories of all Canadian-published paperback books where these are written by Canadians and have been published during the preceding twelve months, subject to the same conditions as are attached above to Canadian periodicals.

Necessary discretion should be vested in the Registrar to determine what quantities might constitute reasonable inventories in each situation

and for each periodical or paperback carried as proposed, to determine the way in which unsold copies should be reported or returned, as well as to authorize in writing particular exemptions from any of these responsibilities where he deems such exemptions to be warranted. If this recommendation is implemented, the Amended Act should make clear that nothing in its provisions is intended to establish quotas of Canadian and non-Canadian publications which shall be displayed by dealers; they are intended only to ensure continuous availability, on terms published in advance and approved by the Registrar, of current Canadian periodicals and paperback books.

Recommendation 2. Every national distributor of periodicals and mass-market paperbacks as defined under the Act as amended should be required to supply all geographical wholesalers (who are registered under the Act and whose registrations are in force) on an equal-terms equal-service basis at all times, provided that if the Registrar shall have circulated a notice in writing to the effect that any national distributor or other supplier of periodicals and paperbacks to geographical wholesalers has failed to discharge the responsibility just described, then no registered geographical wholesaler in Ontario may sell any periodical or mass-market paperback procured

from such a national distributor or supplier until the Registrar has indicated in writing that such sales may be resumed. The legislation should note that this recommendation is intended to ensure equal terms and equal service to all geographical wholesalers, and does not prohibit the sale or purchase of particular titles or periodicals as such.

Recommendation 3. The area or areas in which a geographical wholesaler is registered to carry on business by the Registrar should not exceed a total population of $1\frac{1}{4}$ millions according to the latest population statistics available. The boundaries of such areas may be reviewed from time to time with regard to population fluctuation.

Any geographical wholesaler currently operating in an area or areas whose total population exceeds $1\frac{1}{4}$ millions should be given one year from the date of this report to comply with this legislation and during that time, but not beyond that date, should be considered eligible for registration as a geographical wholesaler in the areas in which it actively operated on June 14, 1971, the effective date of the present Act.

Failure to comply with this geographical restriction should result in the cancellation of the offending geographical wholesaler's registration to carry on business, in addition to the other penalties prescribed in the Act. In order to be

re-eligible for registration the geographical wholesaler must give proof of his compliance with the Amended Act.

For the purposes of this provision "geographical wholesaler" includes any corporation or partnership which the geographical wholesaler owns, controls, or manages, or with which it is associated in any way.

Recommendation 4. The definitions in section 1 of the present Act should be amended to include definitions of "national distributor" and "geographical wholesaler," based on the respective functions of each in the distribution system and on their functions as referred to throughout this report. Except as further recommended below, any firm whose principal business in Ontario is the distribution of periodicals or paperbacks directly to retailers should be considered to be a "geographical wholesaler" for the purposes of the Act.

Further, the exemptions from the responsibility to register set forth in section 1(2) of the Act should be amended to embrace those publishers and publishers' agents in Canada whose principal business is not the distribution of

periodicals or paperbacks directly to retailers.

The Act should also make clear that only geographical wholesalers of periodicals and/or paperbacks are required to register under the Act, and that there is no provision for the registration of national distributors and publishers as such. One of the purposes of this Recommendation is to restrict registration to geographical wholesalers, as defined in the Act as amended.

Recommendation 5. Provision should be made in the Act for public hearings of applications for changes in ownership of registered geographical wholesalers as well as of applications for additional registrations as geographical wholesalers whenever the Registrar considers that the consideration of additional applications for registrations may be in the public interest.

In referring to the "Registrar" in this report, the Commission recognizes that it may be appropriate for the Government to constitute a board or tribunal to assume the enlarged responsibilities which it recommends should be given to the Registrar. Such a board or tribunal would make recommendations to the appropriate Minister of the Crown for implementation.

Recommendation 6. Provision should be made that after the date of this report new ownership of retail news dealers and/or retail booksellers in Ontario, including branches of same, not be permitted to non-residents as defined in the Act. Also, after the date of this report, no registered geographical wholesaler should be permitted to acquire, establish, or obtain an ownership or management interest in any retail news outlet or retail bookstore in Ontario.

A P P E N D I C E S



ONTARIO

ROYAL COMMISSION ON BOOK PUBLISHING

Commissioners
RICHARD ROHMER, Q.C.
Chairman
DALTON CAMP
MARSH JEANNERET
Executive Secretary
ROBERT FLEMING

SUITE S-760
252 BLOOR STREET WEST
TORONTO 181, ONTARIO
TELEPHONE: 365-7801

To His Honour,
The Lieutenant Governor of Ontario

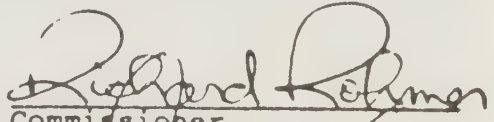
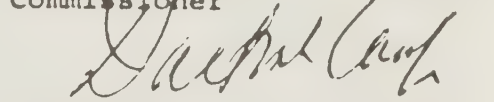
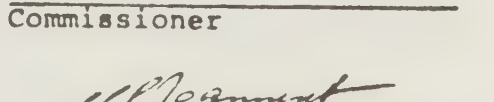
May It Please Your Honour,

We, the undersigned, Richard Heath Rohmer, Q.C., Dalton Kingsley Camp, and Marsh Jeanneret appointed Commissioners by Order-in-Council OC-3991/70 pursuant to the provisions of The Public Inquiries Act, R.S.O. 1960, c. 323, and approved by Your Honour on the 23rd day of December, 1970 to inquire into and report upon:

- (a) the publishing industry in Ontario and throughout Canada with respect to its position within the business community;
- (b) the functions of the publishing industry in terms of its contributions to the cultural life and education of the people of the Province of Ontario and Canada;
- (c) the economic, cultural, social or other consequences for the people of Ontario and of Canada of the substantial ownership or control of publishing firms by foreign or foreign-owned or foreign-controlled corporations or by non-Canadians

beg to submit to Your Honour the enclosed second Interim Report of the Commission.

8th June, 1971


Commissioner

Commissioner

Commissioner

APP. 1

SECOND INTERIM REPORT OF ROYAL COMMISSION ON BOOK PUBLISHING

This Interim Report recommends, among other things, restrictions on the sale to non-residents of Canada of firms or corporations whose principal business in Ontario is the distribution or wholesaling of periodical publications. It is noted that the distribution of mass market paperback books is commonly associated with operations of this kind. It is obvious that periodical publications include magazines and may include newspapers.

Although book publishing has been the central concern of the Commission up to this time, it has been apparent since early in our inquiry that the writing, publication, and distribution of books must be considered in relation to the same activities with regard to other kinds of printed matter. It has been helpful therefore that our terms of reference have not restricted our investigation to book publishing only, but have required us, among other things, to

" . . . conduct an examination of and report upon:

- (a) the publishing industry in Ontario and throughout Canada with respect to its position within the business community; . . .

- (c) the economic, cultural, social or other consequences for the people of Ontario and of Canada of the substantial ownership or control of publishing firms by foreign or foreign-owned or foreign-controlled corporations or by non-Canadians."

As to the specific question of distribution of published printed matter, we have noted that those editions of books that are popularly known as "mass market paperbacks" normally reach Canadian customers from their original publishers through the identical supply channels used for most periodicals, including magazines and similar publications. It is not surprising that mass market paperbacks moving in this way tend in their selection to be no more representative of original Canadian authorship and publishing than are the magazines and other periodicals with which they travel. Indeed, the Canadian aspects of book publishing would appear to be poorly served by the news distribution channels just referred to.

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Our preliminary investigation of this subject indicates that developments are taking place with respect to the ownership and control of the above channels of supply which fully warrant our submitting this second Interim Report to Your Honour. And for reasons which are referred to below, we attach considerable urgency to the recommendations it embodies.

The service of distributing periodical literature to consumer outlets in this Province is furnished almost exclusively by regional wholesalers, or news companies, each normally operating within a clearly defined geographical area. The retail outlets within each area are heavily dependent upon the regional news companies that supply their stock-in-trade, and in general they do not have access to alternative channels of supply. To the extent that they sell mass market paperbacks in addition to periodicals, they usually secure these books from the same sources. Even the selection of titles and authors to be displayed for sale is normally made by the news company as part of its service; moreover, the selection of titles which the latter may have to draw upon may be determined at an earlier stage in the distribution network, and determined not necessarily even in Canada.

It is obvious not only that the regional news companies thus exercise a substantial control over what publications, of all kinds, are or are not offered for sale by most Ontario retail outlets, but that any degree of common ownership of the news companies themselves could have a profound influence on the selection and sources of reading materials offered to the public in the future through newsstands, cigar stores, supermarkets, and similar retail outlets. A possible exception from such control would be bookstores (i.e. stores the principal business of which is the selling of books), the total number of which is regrettably small in any event. Clearly, any trend toward monopoly conditions of ownership or control of the regional news companies would be contrary to the public interest, inviting as it would attempts to influence terms of supply, including conditions of price, discount, source, and conceivably even content. And if such monopoly power should ever come to be vested in non-Canadian hands, the threat to the public interest would clearly be rendered correspondingly more grave.

The Commission has been informed that there is in process of development at this moment just such a threat of monopoly, one which appears to have as its objective unified ownership or control of most of, if not all, the regional news companies in Ontario, and moreover, ownership or control by a foreign interest. Specifically, we have evidence that a concerted effort is under way on the part of one or more non-Canadian individuals or corporations engaged in the wholesaling and distribution of periodicals and mass market paperback books to gain control of the principal distributors or wholesalers of similar merchandise in Ontario and possibly elsewhere in Canada.

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If such an effort is successful, any cultural intention this country may have to further the interests of its own authors and of its book and periodical publishing industries will be largely thwarted. At best it will be dependent on such token support as the foreign monopoly interest may give Canadian publications from time to time, and on whatever terms it wishes to impose. We speak here not of a situation in which ownership is foreign while management remains fully Canadian and largely independent in matters of day to day policy. Rather we are speaking of a situation in which practical control and management will be exercised by non-resident foreign owners, almost necessarily without knowledge of or regard for Canadian cultural interests. We believe that such a situation should not be permitted to develop.

The matters on which we are now reporting have come to our attention very recently as a result of investigations which we have conducted, and there has not yet been an opportunity to pursue them in special public hearings. However, even though some difficulty may be encountered in bringing about the attendance of all relevant witnesses for the purpose, we do at this time intend to proceed in this way.

Your Commission understands that some Canadian publishers and retailers of periodicals may in fact be reluctant to give information to it concerning this growing and powerful intrusion. They fear that the foreign-owned distributors and wholesalers may refuse to carry their publications, or may impose unacceptably terms when they do so. Such decisions would of course be made outside this country. They would affect not only Canadian publishers, but Canadian retailers and their customers as well.

It is the hope of the Commission that retailers, newsstand operators, and all others engaged in the wholesaling, distribution, and retailing of paperback books and periodicals in Canada, will feel free to provide and will indeed provide the Commission with information and evidence bearing on the matters raised in this Interim Report. All such communications will be treated in whatever degree of confidence is requested.

Even though special hearings are planned, your Commission is of the opinion that reported acquisitions of wholesalers already completed in this Province and reports of other negotiations under way at this moment are sufficient reason for us to recommend to Your Honour that precautionary steps in the public interest be taken by your Government at the earliest possible moment. It is our unanimous and firm opinion that further acquisitions by non-Canadians of firms engaged in the wholesaling and distribution of periodicals and mass market paperback books can only be prevented if action is taken by your Government forthwith to give notice to prospective foreign purchasers that such acquisitions may well be subject to reversal, and indeed that your Government is prepared to enact legislation that would effectively prohibit further takeovers of these important links in the communications industry in Ontario.

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The legislation envisaged in our recommendations would be similar in nature to that embodied in the Loan and Trust Corporations Amendment Act, 1970. However, as such legislation would in this case be aimed at preventing further reduction in Canadian ownership and control of Ontario wholesalers and distributors of periodical literature (with which distribution mass market paperbacks may be associated), care should be taken not to extend the restrictions to cover other kinds of whole-sale publishing organizations. We believe this intention could most easily be realized by having the proposed restrictions apply only to individuals and organizations "engaged principally in the wholesaling and/or distribution of periodical publications".

To sum up, your Commission respectfully recommends that your Government forthwith submit to the Legislature of Ontario legislation which will:

(a) using the Loan and Trust Corporations Amendment Act, 1970 as a model, limit the ownership a foreign person or corporation may acquire in any undertaking whose principal business in Ontario is the distribution or wholesaling of periodical publications (we note that the Act referred to prohibits the transfer of shares in a loan or trust corporation to a non-resident where the total foreign ownership would exceed 25 per cent of the capital stock or where any one foreign owner would be registered in respect of more than 10 per cent of the capital stock); and

(b) provide for full disclosure to the Department concerned of all corporate information necessary for the administration of the proposed legislation.

In addition to the above recommendations, your Commission respectfully suggests that this second Interim Report be specially communicated to the Minister of Consumer and Corporate Affairs of The Government of Canada and to the Director of Investigation and Research, Combines Investigation Act, Ottawa, in anticipation of their co-operation with the Commission in its investigation of this vital sector of the Canadian publishing industry.

Toronto, June 8, 1971.

ENFIELD, KIMBERLEY & HEMMERICK
BARRISTERS AND SOLICITORS

FRANK A. ENFIELD, Q.C.
HAROLD E. KIMBERLEY
WILLIAM J. HEMMERICK, Q.C.
FREDERICK H. VANSTON
GORDON E. WOOD

TELEPHONE 366-4655
(AREA CODE 416)

80 KING STREET WEST

TORONTO 110, ONTARIO

September 8th, 1970

EXHIBIT

NO. 10

Metro Toronto News Company
120 Sinnott Road
SCARBOROUGH 705, Ontario

Attention: Mr. J.B. Wilcock, C.A.

Dear Sirs:

Re: Proposed Consignment Contracts

Pursuant to your instructions, we reviewed the possibilities of the Company shipping merchandise on consignment to the various retail outlets and we would like to comment on this situation as follows:

One of the best writers on commercial law comments on sale on consignment as follows:

"The practice of selling goods on consignment to distributors or dealers would appear to be far less prevalent in Canada than it has been in the past, and except in certain specific trades the consignment agreement is no longer a standard commercial transaction. This development is directly related to the greatly increased emphasis on credit. If the distributor or dealer is a satisfactory "credit risk" the title to the goods will generally be passed to him and normal credit terms granted. If his credit rating is not satisfactory the manufacturer or supplier either will not deal with him at all or will deal on a wholesale conditional sale basis."

I included the above in this letter as a matter of interest. The consignment situation is a special one, therefore, and this is not to say that it would not be available for your particular situation.

In order to create a proper consignment arrangement, the consignment contract must contain the following:

1. A clear statement that the goods belong to the Consignor.

. . . 2

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- 2 -

2. An acknowledgment by the Consignee that he holds the goods in trust for the Consignor as bailee.
3. That the goods will be kept separate and apart from any other goods.
4. That the Consignee will account for the money for the sale of the goods as they are sold and that the sale moneys are trust moneys for the Consignor apart from the portion of the sale moneys that belong to the Consignee as his commission.
5. That the Consignee will account for all moneys and all goods.
6. That the Consignor has the right to pick up the goods at any time.

There has been a case on the question of where the Conditional Sales Act is applicable to a contract where goods are delivered on consignment. In this case, R, a merchant, shipped goods to A, the wholesaler, "on consignment". A went into bankruptcy and R claimed the goods from the trustee. HELD, R was entitled to them. A was merely R's agent for the purpose of reselling the goods, and the title never passed to A. The Conditional Sales Act did not apply because it was never intended that A should become the purchaser.

In regard to The Bankruptcy Act, it has been held that if goods are delivered on consignment the relationship between the parties is not that of a vendor and purchaser, but of Consignor and Consignee, and the property in the goods continues in the Consignor. On the bankruptcy of the Consignee the goods in question are not available to his creditors but belong to the Consignor.

In the bankruptcy, the claimant (Consignor) and not the trustee, has to prove that there was a consignment arrangement and not a sale. In order to establish that certain goods were sold on consignment there must be more than merely the words "on consignment" on the invoice. An agreement should be established to the effect that the Consignee should keep the goods and proceeds separate, is required to account after the sale and is obligated to pay for the goods only if sold by him.

If it turns out that the arrangement between the parties was in effect one of purchase and sale, the goods in the hands of the purchaser vest on his bankruptcy in the trustee and constitute property divisible among his creditors.

Taking into account all of the above, it is therefore necessary to show a proper consignment agreement. To

APP. 7

- 3 -

this end we have drafted a proposed consignment contract, a copy of which you will find enclosed. It covers, I believe, all of the points raised.

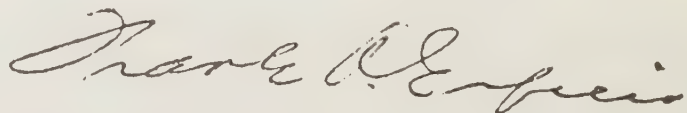
I know it is a matter of practical politics whether you are able to work such an arrangement with your customers. You will notice, for example, in the contract I have left blank all of the methods that are to be applied regarding payment by the customer. I am not sure whether they make a daily cash payment or how this is handled, but whatever method is used, it will have to be set out in the agreement.

I am not sure if it is true that the customer only pays for merchandise that he has sold. It may be that some merchandise he can return, some unsold material, and obtain full credit and that on others he has to purchase outright.

In any event, after you have reviewed the above, I would be pleased to assist in any way I can in drawing up a final form of consignment agreement.

Yours very truly,

ENFIELD, KIMBERLEY & HEMMERICK



Frank A. Enfield

FAE:sc
encl.*

6P
 CONSIGNMENT AGREEMENT BETWEEN METRO TORONTO NEWS
 COMPANY, Consignor, and (CUSTOMER'S NAME), Consignee,

IN CONSIDERATION of the mutual agreements set out
 below the Consignor and the Consignee agree as follows:

1. The Consignor, a distributor of all manner of publications and printed matter, agrees to ship to the Consignee and Consignee agrees to receive upon consignment for sale in the Consignee's business, such publications and printed matter (herein called the merchandise) belonging to the Consignor as the Consignor may from time to time place in the custody of the Consignee;
2. The said consigned merchandise always remains the property of the Consignor, and the Consignee holds the merchandise as bailee in trust for the Consignor, until the merchandise is either removed by the Consignor or sold by the Consignee;
3. The Consignee will display and store the said merchandise in a suitable place and separate from all other goods and merchandise that the Consignee may have in his premises;
4. The Consignor shall have the right to take possession of and remove the consigned merchandise at any time and shall have the right to enter the Consignee's premises to inspect the merchandise and so remove it;
5. The Consignor will, at the time of each consignment

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send an invoice to the Consignee indicating the price of the goods shipped and the Consignee is to receive, as his commission on the sale of the said merchandise, the amount realized from such sale over and above the price at which the said merchandise is so invoiced;

6. All moneys received from the sale of the consigned merchandise shall be held by the Consignee in trust for the Consignor and be kept separate and apart from all other moneys the Consignee may have, and the Consignee shall be entitled to deduct from such trust funds daily the amount of his commission aforesaid, and shall pay the balance to the Consignor as follows:

Consignment to be accounted for to the Consignor

7. Consignee must be in a position at all times to account to the Consignor ^{for} all sales of the said merchandise and to pay the Consignor for such merchandise in the manner aforesaid, and all sales of the consigned merchandise shall be accounted for in cash;

8. This consignment contract remains in full force and effect until terminated by notice in writing from the Consignee to the Consignor, or until terminated by the Consignor so terminating without notice to the Consignee, and termination shall not effect the rights of the Consignor to forthwith take possession of and remove the consigned

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- 3 -

merchandise from the Consignee's premises or anywhere else
nor shall it release the Consignee from the duty to account
to the Consignor or from any other obligation to the Con-
signor that may then remain unfulfilled.

DATED at the Municipality of Metropolitan Toronto.

this, day of 1970.

(consignor)

(consignee)

Full of
 J. B. Lusk
 London 11/70

Dear Sir -

I am enclosing herewith a signed consignment agreement which sets out the method of doing business between you and our company. It has been our unfortunate experience in the last few years to find that ^{various} stores & druggists have failed in business, & in certain of these cases it is ^{very} difficult in obtaining our consigned goods from the barcliff & trustee not having a formal agreement available to them.

We also wish to have records accomplished for the as to balance, receipts, addresses, etc. and so we have set out the agreement at the end of the agreement for your perusal & use.

If there are any questions concerning this agreement, we wish you to contact either J. B. Lusk or B. K. Lusk in connection with this.

Here enclosing a stamped and addressed envelope to be used in returning the agreement to us. If you desire a copy of the agreement we will be glad to supply it to you.

Yours sincerely

Wm. B. Lusk & Co. (as the firm is called)

EX-91

EXHIBIT

News Company

120 Sinnott Road • Scarborough, Ontario • Phone (416) 755 1166

NO. 9

OF SEPTEMBER 19.

Dear Dealer:

It has been our feeling for some time that there should be a clearly defined working arrangement between ourselves and our dealers.

Therefore, we would ask that you sign and return one copy of the attached dealer agreement as soon as possible.

Should there be any questions, please contact me at 755-1166.

Sincerely,



Larry Macfarlane,
Credit Manager.

LM/S

Encl.

